IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

LYNN SPARKS,

Plaintiff,

VS.

GOALIE ENTERTAINMENT, INC.,

Defendant.

No. 4:06-cv-00602-JEG

ORDER ON DEFENDANT'S MOTION TO TRANSFER PURSUANT TO 28 U.S.C. § 1404

This matter comes before the Court on Defendant's Motion to Transfer Venue to the U.S. District Court for the District of Colorado (Clerk's No. 4). Plaintiff Lynn Sparks is represented by Gordon R. Fischer. Defendant Goalie Entertainment, Inc., is represented by Frank Suyat and G. Rawson Stevens. Plaintiff had requested a hearing on the present motion; however, the Court finds under the circumstances no hearing is required. The matter is fully submitted and ready for ruling.

SUMMARY OF MATERIAL FACTS

Plaintiff Lynn Sparks, an Iowa resident, was hired as an at-will employee on May 21, 2001, by Defendant Goalie Entertainment, a California corporation with its principal place of business in Denver, Colorado. Prior to being hired as an employee, Plaintiff had provided consulting services to the Defendant out of her Iowa home, beginning in 1994. When she was hired as an employee, she continued to work out of her home. During this period of employment, Plaintiff was required to be in Denver for some portion of her work time. The amount of time Plaintiff spent in Denver is not completely clear, but the record suggests a range from either three days a week to alternating one week in Denver and one week in Iowa.

On August 19, 2004, Plaintiff terminated her employment with Defendant and went to work for a competitor of Defendant. On June 6, 2005, the Defendant rehired Plaintiff as an at-will employee to work for M&M Sales, a division of Goalie Entertainment. Plaintiff claims the hiring was pursuant to an oral agreement between her and Edward Wedelstedt, who at the time

was president of Goalie Entertainment. Plaintiff was then employed as a shopper and was supervised by either Mr. Randy Warren, who was located in Denver, or Lynn Swanson, whose location at the time of the underlying events is unclear but who now is located in California. This position required traveling to Defendant's various retail stores and Defendant's competitors' stores throughout the United States to survey the operations of the stores.

Later in 2005, Plaintiff received news that her mother was terminally ill. Because of this situation, she chose to remain in Iowa to be near her mother.

Throughout Plaintiff's employment with Defendant, Defendant maintained an employee manual, which contains detailed procedures and policies concerning the Family Medical Leave Act ("FMLA"). The employee manual requires that an employee notify her supervisor or the human resources department of her need to take FMLA leave. Under the Act, to be eligible for leave, an employee must work 1,250 hours in the preceding 12 months. 29 U.S.C. § 2611. Plaintiff claims that she received approval for leave from Linda Hoy, Edward Wedelstedt's secretary, though it is contended Linda Hoy, as secretary, had no authority to grant approval of leave. Plaintiff apparently never contacted Mr. Warren, nor did she contact the human resources department as specified by the employee manual.

On September 29, 2005, Mr. Warren called Plaintiff's cell phone to determine her location, because he had not been able to reach her for the previous week, and to determine the status of written reports he had been requesting for the past week. During that phone conversation, Mr. Warren terminated Plaintiff's employment with Defendant, at which time Plaintiff informed him that her mother was ill. Defendant alleges that at the time of Plaintiff's termination, she had not worked the required 1,250 hours in the preceding 12 months to be eligible for leave under the FMLA.

Plaintiff commenced this case on November 13, 2006, in the Iowa District Court for Polk County, asserting a claim under the Family Medical Leave Act and a common law promissory

estoppel claim, and on December, 19, 2006, Defendant removed the case to this court pursuant to 28 U.S.C. § 1441(a). On December 26, 2006, Defendant filed the present Motion to Transfer Venue to the District of Colorado pursuant to 28 U.S.C. § 1404. Plaintiff filed a resistance to Defendant's motion to transfer venue on January 19, 2007, and Defendant filed a reply on February 2, 2007.

APPLICABLE LAW AND DISCUSSION

A. Applicable Standards for Transfer of Venue Under 28 U.S.C. § 1404.

The federal transfer statute provides, "[F]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The statute allows for the "easy change of venue within a unified federal system." Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254 (1981). This statute is "intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness." Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988) (quoting Van Dusen v. Barrack, 376 U.S. 612, 622 (1964)). District courts are not limited to the factors enumerated in the statute but may consider all relevant factors. Terra Int'1, Inc. v. Miss. Chem. Corp., 119 F.3d 688, 691 (8th Cir. 1997).

The moving party has the burden of proving a transfer is warranted. <u>Id.</u> at 695. To prove that transfer is proper, the defendant must show that "(1) venue is proper in the transferor court; (2) venue is proper in the transferee court; and (3) the transfer is for the convenience of the parties and witnesses and promotes the interests of justice." <u>Intercoast Capital Co. v. Wailuku River Hydroelectric Ltd.</u>, 2005 WL 290011, *9 (S.D. Iowa Jan. 19, 2005) (quoting <u>Black & Decker Corp. v. Amirra, Inc.</u>, 909 F. Supp. 633, 635 (W.D. Ark. 1995)); <u>see also Caleshu v. Wangelin</u>, 549 F.2d 93, 96 n.4 (8th Cir. 1977) (reasoning that section 1404(a) does not dispense with the requirement that "venue must be proper in the transferee district").

If jurisdiction is proper in both the transferee and transferor districts, the Court will look generally at three factors in deciding a motion to transfer pursuant to section 1404(a): "(1) the convenience of the parties; (2) the convenience of witnesses; and (3) the interests of justice." Terra Int'l, Inc., 119 F.3d at 691 (citing 28 U.S.C. § 1404(a)). The evaluation is not limited to these factors; rather, the Court should make a "case-by-case evaluation of the particular circumstances at hand and a consideration of all relevant factors." Id. (citing Stewart Org., 487 U.S. at 29). Some relevant "convenience" factors the Court will consider include "(1) the convenience of the parties, (2) the convenience of the witnesses – including the willingness of witnesses to appear, the ability to subpoena witnesses, and the adequacy of deposition testimony, (3) the accessibility to records and documents, (4) the location where the conduct complained of occurred, and (5) the applicability of each forum state's substantive law." Id. at 696 (cited in Wells Fargo Fin. Leasing, Inc. v. Orlando Magic Ltd., 431 F. Supp. 2d 955, 966 (S.D. Iowa 2006)). Relevant, and somewhat overlapping, factors implicating the interest of justice include "(1) judicial economy, (2) the plaintiff's choice of forum, (3) the comparative costs to the parties of litigating in each forum, (4) each party's ability to enforce a judgment, (5) obstacles to a fair trial, (6) conflict of law issues, and (7) the advantages of having a local court determine questions of local law." Id.

In considering these factors however, the "plaintiff's choice of forum will not be disturbed unless the movant for transfer demonstrates that the balance of convenience and justice weighs heavily in favor of transfer." Intercoast Capital Co., 2005 WL 290011, at *10 (quoting Kovatch Corp. v. Rockwood Sys. Corp., 666 F. Supp. 707, 708 (M.D. Pa. 1986); see also Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970) (stating "[i]t is black letter law that a plaintiff's choice of proper forum is a paramount consideration in any determination of a transfer request"). Therefore, "'[m]erely shifting the inconvenience from one side to the other . . . obviously is not a permissible justification for a change of venue."" Terra Int'l, Inc., 119 F.3d at

696-97 (quoting Scheidt v. Klein, 956 F.2d 963, 966 (10th Cir. 1992)). The Defendant has a definite burden to "make a clear showing that the balance of interests weighs in favor of the proposed transfer, and unless that balance is strongly in favor of the moving party, the plaintiff's choice of forum should not be disturbed." Int'l Adm'rs, Inc. v. Pettigrew, 430 F. Supp. 2d 890, 899 (S.D. Iowa 2006) (quoting Houk v. Kimberly-Clark Corp., 613 F. Supp. 923, 927 (W.D. Mo. 1985)).

В. Application of the Standards to This Motion.

Venue is proper in either court.

Plaintiff concedes venue is proper in either the Southern District of Iowa or the District of Colorado.

Convenience Factors.

(a) Convenience of the parties.

Defendant admits that, while if the case remains in the Southern District of Iowa Defendant will be inconvenienced, the Plaintiff would suffer a similar inconvenience if the case were transferred to the District of Colorado. Defendant claims that this factor is therefore not determinative. However, as Defendant bears the burden in showing transfer is appropriate, with an equal burden the balancing of this factor shows that Plaintiff's choice of forum should not be disturbed. Further, as discussed more fully below, the Court does not regard this burden as equal.

(b) Convenience of the witnesses – willingness of witnesses to appear, ability to subpoena witnesses, adequacy of deposition testimony.

Defendant correctly states that almost all material witnesses in the case reside in Colorado, excluding Plaintiff. Plaintiff points out that two potential witnesses now live in California; however, given the features of modern air travel, this discrepancy is irrelevant as to witness convenience. Defendant fails to argue any specifics as to the inconvenience to the

witnesses, beyond the fact that most of them are located in Colorado. "[T]he party seeking the transfer must clearly specify the essential witnesses to be called and must make a general statement of what their testimony will cover." Medicap Pharmacies, Inc. v. Faidley, 416 F. Supp. 2d 678, 687 (S.D. Iowa 2006) (quoting Nelson v. Master Lease Corp., 759 F. Supp. 1397, 1402 (D. Minn. 1991)). "In determining this factor, the court must examine the materiality and importance of the anticipated witnesses' testimony and then determine their accessibility and convenience to the forum." Id. (citing Reid-Walen v. Hansen, 933 F.2d 1390, 1396 (8th Cir. 1991)). The Defendant may meet this burden through affidavits or other information. Id. This factor is "generally considered to be one of the most important factors to be weighed in the venue transfer analysis." Id.

Defendant named three potential witnesses, who are no longer employees, that may need to be subpoenaed, and who from the facts clearly have knowledge of the relative relationship between Defendant and Plaintiff. However, Defendant has provided no showing these witnesses would be unable or unwilling to testify in Iowa. See Medicap Pharmacies, Inc., 416 F. Supp. 2d at 688 (finding defendants failed to meet their burden on this factor because they did not name any potential witnesses nor did they offer any evidence that witnesses would be unwilling or unable to testify in Iowa). Defendant lists in an affidavit all seven witnesses it anticipates calling, indicating that they are residents of Colorado (except for Plaintiff Lynn Sparks), but does not indicate what the substance of their testimony would be. From Defendant's motion and affidavit, and Plaintiff's resistance and affidavits, it is clear the witnesses named by Defendant have knowledge of the issues involved in this case.

All of these witnesses, except the Plaintiff, live in Colorado; thus, trying the case in Colorado would eliminate for Defendant the cost and inconvenience of the witnesses traveling to Iowa. Of these witnesses, Defendant names three who are no longer employees of Defendant. If they are unwilling to appear at trial, Defendant can no longer require their attendance due to any

employee/employer relationship. Thus, Defendant's ability to compel their attendance at a trial in Iowa is limited under Fed. R. Civ. P. 45(c)(3)(A)(ii), which protects nonparties from having to travel more than 100 miles from where they reside, are employed, or regularly transact business in person. Subject to clause (c)(3)(A)(ii), the Court may serve a subpoena any place within the district or within 100 miles of the place of trial, deposition, or other proceeding specified in the subpoena. Fed. R. Civ. P. 45(b)(2). If the trial were held in Colorado, the District Court there could compel the attendance of those three Colorado residents. Neither the Iowa court nor the Colorado court can compel the attendance of the witnesses from California.

Live testimony is most always preferred to the presentation of deposition testimony. See Coast-to-Coast Stores, Inc. v. Womack-Bowers, Inc., 594 F. Supp. 731, 734 (D. Minn. 1984). Based on both Defendant's and Plaintiff's arguments, this factor weighs in favor of transfer. All Defendant's named witnesses are located in Colorado, except the Plaintiff herself and two witnesses named by Plaintiff whose probative value in the case may be slim at best. Many courts have found this factor was enough to overcome a plaintiff's choice of forum. See Aramark Mgmt. Servs. L.P. v. Martha's Vineyard Hospital, Inc., 2003 WL 21476091, at *4 (N.D. III. June 23, 2003) (granting transfer because former employees were to be called as key witnesses, none of whom were located in Illinois, but were nearer to Massachusetts); GMAC/Residential Funding Corp. v. The Platinum Co. of Real Estate & Fin. Servs, Inc., 2003 WL 1572007 (D. Minn. March 13, 2003) (granting transfer because 15 nonparty witnesses resided in Ohio, and of these, the defendant no longer had a business relationship with 13 of them, and thus could not require their voluntary presence in Minnesota); Walter E. Heller & Co. v. James Godbe Co., 601 F. Supp. 319, 322 (N.D. Ill. 1984) (granting transfer because important witnesses were not residents of Illinois, and thus their presence could not be compelled and in addition they may be reluctant to testify voluntarily as they were agents of the adverse party, also noting that their credibility was important, thus deposition testimony would be inadequate);

Coast-to-Coast Stores, Inc., 594 F. Supp. at 733-34 (granting transfer because the greatest number of witnesses lived in Arkansas or closer to Arkansas and their testimony could not be compelled by a Minnesota court, and deposition testimony would be inadequate); Hotel Constrs., Inc. v. Seagrave Corp., 543 F. Supp. 1048, 1051-52 (N.D. Ill. 1982) (granting transfer based on the large number of witnesses located in New York and the importance of their live testimony, also noting that defendant's nonparty witnesses "might be reluctant to testify, and their availability is necessary to a fair adjudication of this action"); Charron v. Great Northern Ry. Co., 309 F. Supp. 1386, 1387 (D. Minn. 1970) (granting transfer because almost all the potential witnesses resided in the city of the transferee court and defendant argued that they may not be willing to travel to Minnesota, although no definitive evidence showed that they would indeed be unwilling); Kellner v. Saye, 306 F. Supp. 1041, 1045 (D. Neb. 1969) (granting transfer because operative facts arose in Nevada, all witnesses to be called were residents of Nevada "and thus not subject to compulsory process in this district," and there were indications that Nevada law may apply); but see Petters Co., Inc. v. Stayhealthy, Inc., 2004 WL 1630932, at *2 (D. Minn. July 7, 2004) (refusing to grant transfer because though essential nonparty witnesses were from outside Minnesota, their depositions had been video-taped and the defendant had not indicated that they would be unwilling to give testimony in Minnesota). Of the Colorado witnesses, three may need to be subpoenaed, an impossibility for the Southern District of Iowa due to Fed. R. Civ. P. 45(b)(2). For this reason, this factor weighs in favor of transfer.

(c) Accessibility to records and documents.

Most, if not all, records and documents that may be subject to discovery are located in Denver. However, as Plaintiff argues, while this factor is to be considered, "modern technology allows easy reproduction and little weight should be given if the records can be easily transported." Medicap Pharmacies, Inc., 416 F. Supp. 2d at 688 (citing Coker v. Bank of America, 984 F. Supp. 757, 766 (S.D.N.Y. 1997) (concluding in the era of photocopying, fax machines,

and Federal Express, the weight given to this factor is slight)). Defendant, who does business throughout the United States, does not make any argument showing that there would be hardship in producing discovery documents in Iowa.

Given the little weight that is given to this factor and the fact that, in this case, there are very few documents and records at issue, the fact that the majority of the records and documents are located in Colorado is not determinative.

(d) Location where the conduct complained of occurred.

The location of the conduct complained of in this case is disputed. The Plaintiff worked an equal amount of her time in Iowa and Colorado during the first part of her employment. After her rehire, she traveled across the country for her work, but she was based in Iowa. The Defendant's principal place of business is in Colorado. It is there that Plaintiff's supervisor was located and where hiring and firing decisions were made. The termination of Plaintiff occurred over telephone, with one party in Colorado and the other in Iowa.

However, because this factor is considered mainly for evidentiary reasons, for example, to have access to the scene of the conduct or other physical aspects of the case, it has little weight in this case.

(e) Applicability of each forum state's substantive law.

This factor cannot be fully resolved on the current record as neither Defendant nor Plaintiff has put forth any argument as to which state's substantive law will apply to the state claim of promissory estoppel. Without determining the applicability of either Iowa or Colorado law, it is clear that Colorado courts are as capable of applying Iowa law as Iowa courts are capable of applying Colorado law. The main claim in the case is based on the Family Medical Leave Act, controlled by federal law. Thus, this factor shows the case can equally lie in either district court, resulting in Plaintiff's choice being controlling.

3. **Interest of Justice Factors.**

(a) Judicial economy.

There is no evidence showing that this matter can be tried more efficiently or expeditiously in a Colorado court than in an Iowa court. Though there has been some activity in Iowa, it is not so much that judicial economy weighs heavily in favor of keeping the case here. As such, this factor does not weigh either for or against transfer.

(b) Plaintiff's choice of forum.

Defendant argues that as the case has already been removed from state court to federal court, Plaintiff's choice of forum has already been changed, and thus, a transfer to Colorado federal court does no further harm to Plaintiff's forum choice. However, Plaintiff did not just choose state court as her original forum, she chose Iowa, presumably because it was more convenient for her. This Plaintiff is an individual involved in litigation against a business entity that operates in multiple states. The obvious economic imbalance between the parties illustrates the importance of venue. An individual plaintiff's ability to seek legal redress may in fact be extinguished by the added expense of litigating remotely from the state of residence. Accordingly, the Plaintiff's choice of forum is to be given paramount consideration. Wells Fargo Fin. <u>Leasing, Inc.</u>, 431 F. Supp. 2d at 966. The Court is hesitant to disturb Plaintiff's choice unless Defendant has clearly demonstrated that the "balance of convenience and justice weighs heavily in favor of transfer." <u>Id.</u> at 967 (quoting <u>Kovatch Corp.</u> 666 F. Supp. at 708).

(c) Comparative costs to the parties of litigating in each forum.

Defendant argues that the costs of litigating this case in Iowa are significantly increased, whereas if litigated in Colorado, Plaintiff's costs increase only slightly. Defendant argues that the bulk of the discovery will take place in Colorado because almost all the witnesses reside there. Defendant argues that for trial, it will have to pay the cost of travel and lodging, not only for counsel, but also for corporate representatives and each of its witnesses. In contrast, Defendant argues, Plaintiff will only need to pay the cost of travel and lodging for herself and her counsel.

Though this may be true, "the mere fact that the costs of litigation would be more burdensome on Defendants than on Plaintiff should the case remain in Iowa is not alone sufficient cause to grant a transfer." Int'l Adm'rs, Inc., 430 F. Supp. 2d at 900. This is especially true when, as in the present case, the Plaintiff is an individual and the Defendant is a corporation. Martin v. Wal-Mart Stores, Inc., 2000 WL 33915814, *9 (N.D. Iowa Oct. 9, 2000) ("where disparity exists between the parties, such as an individual plaintiff suing a large corporation, the relative means of the parties may be considered"). Here, that appears to be all that Defendant is arguing; therefore, this factor does not weigh in favor of a transfer.

(d) Each party's ability to enforce a judgment.

Defendant argues that as Defendant's principal place of business is located in Colorado, Plaintiff would have to obtain enforcement there. Thus, the costs of enforcing the judgment would be less if venue were transferred to Colorado. This is a valid argument that weighs slightly in favor of a transfer; however, a plaintiff's ability to enforce a judgment in a sister state is a minimal concern, unlike enforcing a judgment in a foreign country.

(e) Obstacles to a fair trial.

It is clear that neither court will be less fair than the other; however, Defendant argues that because it has no way to compel former employees who reside in Colorado to testify at a trial in Iowa, it may not receive a fair trial unless they voluntarily agree to travel to Iowa. This is a valid concern on the part of the Defendant. If the trial remains in the Southern District of Iowa, the Defendant may not be able to have live testimony from those witnesses. However, Defendant has not shown that reading deposition testimony or video-deposition testimony would not be sufficient.

Similar to the above convenience factor, this factor is also not resolvable on the current record as neither Defendant nor Plaintiff has put forth any argument as to which state's substantive law will apply to the state claim of promissory estoppel, or whether there is any material difference in the applicable law in each state. Without determining the applicability of either Iowa or Colorado law, it is clear that Colorado courts are as capable of applying Iowa law as Iowa courts are capable of applying Colorado law. The remaining claim is based on federal law.

(g) Advantages of having a local court determine questions of local law.

This factor is inapplicable under the current posture of this case.

Defendant's Burden to Show 1404(a) Factors Substantially Outweigh Plaintiff's Choice of Forum.

As repeatedly observed in this analysis, "plaintiff's choice of forum will not be disturbed unless the movant for transfer demonstrates that the balance of convenience and justice weighs heavily in favor of transfer." Intercoast Capital Co., 2005 WL 290011, at *10. "Merely shifting the inconvenience from one side to the other . . . obviously is not a permissible justification for a change of venue." Id. Thus, "it is ultimately the Defendant['s] burden to show that the § 1404(a) factors weigh 'strongly' in [its] favor." Medicap Pharmacies, Inc., 416 F. Supp. 2d at 690 (citing Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947)).

Of all the factors discussed above, the only one which weighs strongly in favor of transfer is the convenience of the witnesses. Every material witness in the case resides in Colorado or California, excluding the Plaintiff herself. This factor is "generally considered to be one of the most important factors to be weighed in the venue transfer analysis." Medicap Pharmacies, Inc., 416 F. Supp. 2d at 687. In addition, "the party seeking the transfer must clearly specify the essential witnesses to be called and must make a general statement of what their testimony will cover." <u>Id.</u> (quoting <u>Nelson</u>, 759 F. Supp. at 1402). "In determining this

factor, the court must examine the materiality and importance of the anticipated witnesses' testimony and then determine their accessibility and convenience to the forum." Id. (citing Reid-Walen, 933 F.2d at 1396).

Defendant named three potential witnesses, located in Colorado, who are no longer employees and may not be cooperative. Defendant argues further that live testimony is always preferred to the presentation of deposition testimony. See Coast-to-Coast Stores, Inc., 594 F. Supp. at 734. That is especially true in this case, the Defendant argues, as credibility will be an important factor as the Court will be asked to hear the various testimony concerning the reasons for the Plaintiff's termination and Plaintiff's alleged notice to the secretary of the president of the Defendant company. However, credibility of the witnesses may not be as important a factor as Defendant makes it out to be, as the issue to which they will be testifying is more narrowly whether proper notice was given under the Employee Handbook and whether Plaintiff otherwise qualified for leave. Video depositions would seem less wanting under these circumstances.

Though, as discussed above, many courts have found that when almost all relevant witnesses are located in the transferee state, a plaintiff's choice of forum can be overcome, this case presents unique factors which increase Defendant's burden to demonstrate justice warrants a transfer. Most of the cases mentioned above dealt with conflict between two corporate parties, where the cost of litigating in a distant forum could be reasonably borne by either party. See Aramark Mgmt. Servs., 2003 WL 21476091, at *4 (granting transfer in case between limited partnership and nonprofit corporation); GMAC/Residential Funding Corp., 2003 WL 1572007 (granting transfer in case between two corporations); Walter E. Heller & Co., 601 F. Supp. at 322 (same); Coast-to-Coast Stores, Inc., 594 F. Supp. at 733-34 (same); Hotel Constrs., Inc., 543 F. Supp. at 1051-52 (same). The two remaining cases where transfer was granted involved either two individuals or unique circumstances warranting transfer. See Charron, 309 F. Supp. at 1387 (granting transfer when plaintiff himself and plaintiff's witnesses lived in the transferee city);

Kellner, 306 F. Supp. at 1045 (granting transfer between two individuals). And in one case between corporations, transfer was not granted because the defendant did not show that its witnesses were unable or unwilling to travel to the distant forum and video depositions had been taken, which were deemed adequate by the court. Petters Co., Inc., 2004 WL 1630932, at *2.

The discretion placed in the district court under section 1404(a) requires it to analyze these motions with an "individualized, case-by-case consideration of convenience and fairness." Stewart Org., 487 U.S. at 29. This case is unique and unlike the above-mentioned cases in that it is an individual plaintiff suing a corporation. She has chosen her home state as her forum, a logical and understandable choice. In such a case, the Court is extremely reluctant to disturb that choice.

In Martin v. Wal-Mart Stores, Inc., a former Wal-Mart truck driver brought suit in Iowa, his home state, against the company for injuries sustained on a loading dock in Illinois. Martin, 2000 WL 33915814, at *1. In Martin, the plaintiff was still suffering from injuries that made it both difficult to travel to another forum and difficult to work and thus be able to afford the costs of litigating in a different forum. Id. at *5. Though virtually all key witnesses were located in Illinois, Wal-Mart submitted no evidence that those witnesses would be unwilling to travel to Iowa or that deposition testimony would be inadequate. Id. at *6. As the court correctly stated, "[m]ere allegations, unsupported by affidavits or other proof, are insufficient to justify a transfer of venue." Id. The court went on to say, "[m]oreover, 'when plaintiff's home forum has been chosen, it is reasonable to assume that this choice is convenient and [, thus,] plaintiff's selection is entitled to greater deference when plaintiff chooses the home forum." Id. at *8 (quoting Kovatch Corp., 666 F. Supp. at 708. In addition, when there is disparity between the parties, "such as an individual plaintiff suing a large corporation, the relative means of the parties may be considered." Id. at *9. See also Vandusen v. J.C. Penney Co., 207 F. Supp. 529, 536 (W.D. Ark. 1962) (stating "merely because expenses which the defendant would be required to incur to

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transport the witnesses . . . is not sufficient to show that in the interest of justice the motion to transfer should be granted"). This is precisely the case here. Plaintiff has chosen her home state, a court where she can more reasonably access the judicial process. Defendant is attempting to thwart that choice, an attempt, which, if granted, may very well result in Plaintiff never having her "day in court." As concluded in Martin, "[c]ommon sense, . . . dictates that [the Defendant] is in a better position to assume costs than a[n employee]." Id.

CONCLUSION

Because Plaintiff's choice of forum gives the presumption that the case should not be transferred, it should remain where Plaintiff has chosen. This presumption can be overcome, but in a case involving an individual plaintiff versus a corporation, it is more difficult to do so. Here, though it is clear that all the key witnesses are located in Colorado or California, and, for their convenience, a trial in the district court of Colorado would be better, that fact alone is not sufficient to overcome the strong presumption in favor of Plaintiff's choice of forum. Common sense and fairness dictate that the Court deny Defendant's motion to transfer pursuant to 28 U.S.C. § 1404. The balance of convenience and justice does not require transfer to the District of Colorado. Accordingly, Defendant's Motion to Transfer Venue pursuant to 28 U.S.C. § 1404 (Clerk's No. 4) must be **denied**.

IT IS SO ORDERED.

Dated this 30th day of March, 2007.